

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

January 19, 2006

OFFICE OF  
MANAGING DIRECTOR

Dana Frix, Esq.  
Chadbourne & Parke, LLP  
1200 New Hampshire Ave., N.W.  
Suite 300  
Washington, D.C. 20036

Re: InPhonic, Inc.  
CMRS Regulatory Fees  
Fee No. 00000RROG-064

Dear Mr. Frix:

This is in response to your request filed April 25, 2005 on behalf of InPhonic, Inc. (InPhonic) (*Letter*), that the Commission declare the corporation's wireless resale services to be exempt from regulatory fees. As explained herein, InPhonic is not required to pay a fee for this service.

You recite that "[t]hrough its subsidiary, Star Number, Inc., and through the brand name Liberty Wireless, InPhonic offers mobile virtual network operator (MVNO) services."<sup>1</sup> You state that "InPhonic provides the MVNO service to consumers through wireless airtime service that it purchases wholesale from Sprint Corporation and resells to Liberty Wireless customers."<sup>2</sup> In a subsequent communication, you state that InPhonic's MVNO's service is Commercial Mobile Radio Service (CMRS), as defined under the Commission's rules.<sup>3</sup> Citing the *Regulatory Fees Fact Sheet: What You Owe - Commercial Wireless Services for FY 2004* (July 2004), you assert, *inter alia*, that the CMRS service provided by InPhonic through its subsidiary, Star Number, Inc., is not included in the list of CMRS services subject to regulatory fees.<sup>4</sup>

Payment of a regulatory fee is not required for the wireless resale services at issue here provided by InPhonic under the company's Liberty Wireless brand name. The Commission has stated that "[e]ach [CMRS Mobile Services] licensee . . . will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services." *See Assessment and Collection of Regulatory Fees for Fiscal Year 2002*, 17 FCC Rcd 13203, Attachment F,

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<sup>1</sup> *Letter* at 1.

<sup>2</sup> *Id.*

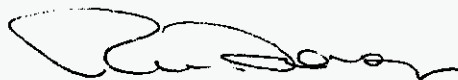
<sup>3</sup> *See* Email from Dana Frix to Joanne Wall (Sept. 19, 2005).

<sup>4</sup> *See Letter* at 2.

¶14 (2002) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525, Attachment F, ¶15 (2001). Therefore, the licensee of the wireless service (i.e., Sprint) and not the reseller, InPhonic, is subject to the regulatory fee.<sup>5</sup>

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger  
Chief Financial Officer

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<sup>5</sup> Because we grant InPhonic the relief it requests on different grounds than those it set forth in its request, we need not reach (or fully describe) InPhonic's arguments as to why it should not be assessed a regulatory fee. We note that on July 25, 2005, the Commission adopted a Notice of Apparent Liability for Forfeiture (*NAL*) against InPhonic in connection with its provision of MVNO service and that InPhonic filed a response to the *NAL*. See *InPhonic, Inc., Notice of Apparent Liability for Forfeiture*, FCC 05-145, 2005 WL 1750418 (July 25, 2005). Our decision in the instant regulatory fee matter has no bearing on the issues raised in the *NAL* proceeding.

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April 21, 2005

Federal Communication Commission  
Bureau / Office

Ms. Claudette Pride  
Office of Managing Director  
Finance and Revenue Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Suite 4-C330  
Washington, DC 20554

Re: Request to Declare InPhonic, Inc. Exempt From FCC Regulatory Fees

Dear Ms. Pride:

With this letter, InPhonic, Inc. ("InPhonic" or "the Company"), respectfully requests that the Federal Communications Commission ("FCC" or "the Commission") declare its wireless resale services to be exempt from the FCC regulatory fees. Through its subsidiary, Star Number, Inc., and through the brand name Liberty Wireless, InPhonic offers mobile virtual network operator ("MVNO") services. InPhonic provides the MVNO service to consumers through wireless airtime service that it purchases wholesale from Sprint Corporation ("Sprint"), and resells to Liberty Wireless customers.<sup>1</sup> Because InPhonic is not required to obtain a license from the Commission to provide its MVNO services, InPhonic seeks assurance from the

<sup>1</sup> InPhonic operates its business in three business segments: wireless information services and activation, mobile virtual network operator ("MVNO"), and data services. The Company's wireless activation and services component markets wireless services on behalf of third-party wireless CMRS providers and devices to consumers through websites that the Company creates and manages for third parties, including online businesses, member-based organizations, and national retailers. The data services business segment leverages relationships established in other business segments to sell a variety of wireless data services such as wireless e-mail and wireless advertising for customers.

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Commission that it is not subject to regulatory fees that are assessed on commercial wireless services as contained in the Commission's Rules and Orders.<sup>2</sup>

As the Commission explains in its Regulatory Fee Fact Sheet for Commercial Wireless Services ("Fact Sheet") the FCC assesses regulatory fees only onto "holders of licenses in the following commercial wireless services: multipoint distribution services (MDS), multichannel multipoint distribution service (MMDS), local multipoint distribution service (LMDS) and commercial radio service (CMRS)."<sup>3</sup> As an MVNO, the Commission's Rules do not require InPhonic to obtain any of the above-listed licenses.<sup>4</sup> Rather, InPhonic utilizes wireless spectrum it purchases from its wholesale supplier, Sprint, a facilities-based carrier that is an FCC licensee.

In the Fact Sheet, the Commission further identifies CMRS service providers who must pay the FCC regulatory fee, including "CMRS cellular providers, CMRS mobile service licensees, and CMRS messaging licensees ... and all other SMR systems authorized for operation."<sup>5</sup> The Commission does not include MVNO service providers in this list. To date, the Commission has made no effort to regulate MVNO service providers under a licensing or authorization regime.<sup>6</sup> As demonstrated in the Commission's Fact Sheet and related Orders, the Commission does not intend for its regulatory fee, the assessment of which is based on a company's wireless licensee status, to be imposed on MNVO service providers.

At bottom, InPhonic is not required to obtain a license to purchase and resell Sprint's airtime to the customers of Liberty Wireless. Therefore, InPhonic respectfully requests the Commission to declare that InPhonic does not owe a FCC regulatory fee on its MNVO services.

<sup>2</sup> As a result of InPhonic's Form 499-A's, InPhonic receives invoices and submits payments for the Telecommunications Relay Service fund and the North American Numbering Plan Administration fund, as well as the Universal Service Fund.

<sup>3</sup> *What You Owe- Commercial Wireless Services For FY 2004*, Regulatory Fees Fact Sheet, (rel. July 2004).

<sup>4</sup> See 47 C.F.R. § 1.1157(d).

<sup>5</sup> See *Id.*

<sup>6</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Ninth Report, FCC-04-216 (rel. September 28, 2004) (discussing the growing success of resold wireless services and the effective competition in the CMRS marketplace).

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If you have any questions concerning this request, please feel free to contact the undersigned at (202) 955-9869.

Sincerely,



Brad E. Mutschelknaus

Edward A. Yorkgitis, Jr.

Darius B. Withers

Karly E. Baraga

Counsel to InPhonic, Inc.

cc: Walter W. Leach, III, Esq., General Counsel, InPhonic, Inc.  
Aaron N. Daniels, Senior Vice President and Corporate Treasurer, InPhonic, Inc.

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